



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,737	01/16/2001	Alan Wayne Henley	7175-67612	7500

7590

06/19/2002

Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

LEWIS, KIM M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/743,737

Applicant(s)

HENLEY ET AL.

Examiner

Kim M. Lewis

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/16/01, 7/5/01 and 9/4/01.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) ~~32~~³² is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/369,113.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed action.

Art Unit: 3761

DETAILED ACTION

Response to Amendment

✓ 1. The preliminary amendment filed on 7/16/01 has been received and made of record in the application file wrapper. The specification ~~has~~ and claim 32 have been amended as requested. Claims 1-31 and 36-44 have been canceled as requested. Claims 32-35 are pending in the instant application.

Information Disclosure Statement

2. The information disclosure statement papers filed 7/5/01 and 9/4/01 have been received, which papers have been made of record in the application file wrapper.

Drawings

3. The drawings are objected to because of the following:

Nebulizer "26" is not shown in Fig. 1 as indicated on page 6, lines 28-32.

"19" is missing from fig. 3 as indicated on page 8, line 5;

"46", "48" and "50" are not shown on Figs. 2 and 3 as indicated on page 8, line 5;

"94" is not shown on Fig. 2 as indicated on page 13, line 9;

Adhesive "158" is not shown in the drawings; and

In Fig. 11, drainage "24" is not labeled. Correction is required

Art Unit: 3761

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "22": and "24".

Correction is required.

Specification

5. The disclosure is objected to because of the following informalities:

Page 8, line 16" nebulizer output port "28" was previously designated as "30";

Page 10, line 14, the applicant refers to "68" as a water trap, then refers to "68" as a pressure sensor on page 6, line 5;

Page 11, line 22, "selector valve 60" should read --selector valve 58--;

Appropriate correction is required.

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35

Art Unit: 3761

U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,398,767 ("Fleischmann").

As regards claim 33, Fleischmann discloses a wound treatment apparatus comprising a bandage (10) having a fluid drainage passageway therein for insertion of a fluid drainage tube (16). Fleischmann further discloses first and second drainage receptacles (24, 28) coupled to the drainage tube, and first and second valves (32, 34) in the form of clamps coupled between the fluid drainage tube and the first and second drainage receptacles.

The applicant should note that both receptacles, because of the configuration of the tubing, can be used to drain the wound.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3761

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims ~~33-34~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,549,756 ("Westaby") in view of U.S. Patent No. 6,398,767 ("Fleischmann").

Regarding claim ~~33-34~~, Westaby substantially discloses all features of the claimed invention including a wound irrigation device comprising, a bandage configured including a wound backing surface configured to face toward the wound and a fluid drainage passageway having an opening adjacent the wound facing surface and a fluid drainage tube coupled to the fluid drainage passageway (col. 2, lines 40-50, col. 2, lines 53-65, and Fig. 1).

Art Unit: 3761

Westaby fails to teach first and second fluid drainage receptacles coupled to the drainage tube and first and second valves coupled between the fluid drainage tube and first and second fluid drainage receptacles, respectively.

Fleischmann discloses a wound treatment device comprising first and second fluid drainage receptacle (24, 28) coupled to a fluid drainage tube (16) for the purpose of containing the fluid removed from the wound site. In view of Fleischmann, it would have been obvious to one having ordinary skill in the art to modify Westaby by adding fluid drainage receptacles for the purpose of containing the fluid removed from the wound site. The applicant should note that both receptacles, because of the configuration of the tubing, can be used to drain the wound.

As regards the valves, Fleischmann pinch valves, in the form of first and second closure mechanisms (clamps) (32, 34).

As regards claim 35, both Westaby and Fleischmann fail to teach a sensor. However, the examiner contends that sensors of all kinds are well known in the art, and the addition of such to a prior art either Westaby or Fleischmann would include only routine skill in the art.

Allowable Subject Matter

10. Claim 32 is allowed.

Conclusion

11. The prior art made of record and not relied shows the state of the art.

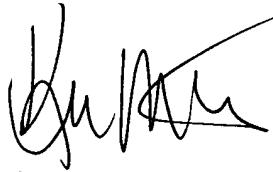
Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (703) 308-1191.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590 .

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

kml
June 13, 2002



KIM M. LEWIS
PRIMARY EXAMINER

Art Unit: 3761

Westaby fails to teach first and second fluid drainage receptacles coupled to the drainage tube and first and second valves coupled between the fluid drainage tube and first and second fluid drainage receptacles, respectively.

Fleischmann discloses a wound treatment device comprising first and second fluid drainage receptacle (24, 28) coupled to a fluid drainage tube (16) for the purpose of containing the fluid removed from the wound site. In view of Fleischmann, it would have been obvious to one having ordinary skill in the art to modify Westaby by adding fluid drainage receptacles for the purpose of containing the fluid removed from the wound site. The applicant should note that both receptacles, because of the configuration of the tubing, can be used to drain the wound.

As regards the valves, Fleischmann pinch valves, in the form of first and second closure mechanisms (clamps) (32, 34).

As regards claim 35, both Westaby and Fleischmann fail to teach a sensor. However, the examiner contends that sensors of all kinds are well known in the art, and the addition of such to a prior art either Westaby or Fleischmann would include only routine skill in the art.

Allowable Subject Matter

10. Claim 32 is allowed.

Conclusion

11. The prior art made of record and not relied shows the state of the art.